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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150413357-5999-02]

RIN 0648-XT012

Atlantic Highly Migratory Species; Commercial Aggregated Large Coastal Shark and Hammerhead Shark Management Group in the Atlantic Region; Retention Limit

Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS is adjusting the commercial aggregated large coastal shark (LCS) and hammerhead shark management group retention limit for directed shark limited access permit holders in the Atlantic region from 36 LCS other than sandbar sharks per vessel per trip to 45 LCS other than sandbar sharks per vessel per trip. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments. The retention limit will remain at 45 LCS other than sandbar sharks per vessel per trip in the Atlantic region through the rest of the 2019 fishing season or until NMFS announces via a notice in the **Federal Register** another adjustment to the retention limit or a fishery closure. This retention limit adjustment affects anyone with a directed shark limited access permit fishing for LCS in the Atlantic region.

DATES: This retention limit adjustment is effective on August 16, 2019, through December 31, 2019, or until NMFS announces via a notice in the **Federal Register** another adjustment to the retention limit or a fishery closure, if warranted.

FOR FURTHER INFORMATION CONTACT: Lauren Latchford Guy DuBeck, or Karyl Brewster-Geisz 301-427-8503; fax 301-713-1917.

SUPPLEMENTARY INFORMATION: Atlantic shark fisheries are managed under the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and implementing regulations (50 CFR part 635) issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Atlantic shark fisheries have separate regional (Gulf of Mexico and Atlantic) quotas for all management groups except those for blue shark, porbeagle shark, pelagic sharks (other than porbeagle or blue sharks), and the shark research fishery for LCS and sandbar sharks. The boundary between the Gulf of Mexico region and the Atlantic region is defined at § 635.27(b)(1) as a line beginning on the East Coast of Florida at the mainland at 25°20.4' N. lat, proceeding due east. Any water and land to the north and east of that boundary is considered, for the purposes of setting and monitoring quotas, to be within the Atlantic region. This inseason action only affects the aggregated LCS and hammerhead shark management groups in the Atlantic region.

Under § 635.24(a)(8), NMFS may adjust the commercial retention limits in the shark fisheries during the fishing season. Before making any adjustment, NMFS must consider specified regulatory criteria (see § 635.24(a)(8)(i) through (vi)). After considering these criteria as discussed below, NMFS has concluded that increasing the retention limit of the Atlantic

aggregated LCS and hammerhead management groups for directed shark limited access permit holders in the Atlantic region will allow use of available aggregated LCS and hammerhead shark management group quotas and will provide fishermen throughout the region equitable fishing opportunities for the rest of the year. Therefore, NMFS is increasing the commercial Atlantic aggregated LCS and hammerhead shark retention limit in the Atlantic region from 36 to 45 LCS other than sandbar shark per vessel per trip.

NMFS considered the inseason retention limit adjustment criteria listed at § 635.24(a)(8)(i) through (vi), which includes:

- The amount of remaining shark quota in the relevant area, region, or sub-region to date, based on dealer reports.

Based on dealer reports through August 9, 2019, 28.6.0 metric tons (mt) dressed weight (dw) (62,980 lb dw), or 17 percent, of the 168.9 mt dw shark quota for aggregated LCS and 8.9 mt dw (19,652 lb dw), or 33 percent, of the 27.1 mt dw shark quota for the hammerhead management groups have been harvested in the Atlantic region. This means that approximately 83 percent of the aggregated LCS quota remains available and approximately 67 percent of the hammerhead shark quota remains available. NMFS took action on April 2, 2019 to reduce retention the retention limit from 25 to 3 after considering the relevant inseason adjustment criteria, particularly the need for all regions to have an equitable opportunity to utilize the quota (84 FR 12524). On June 25, 2019, NMFS increased the retention limit to 36 LCS other than sandbar sharks per vessel per trip (84 FR 29808) to promote use of the available quota.

- The catch rates of the relevant shark species/complexes in the region or sub-region, to date, based on dealer reports.

Based on the current commercial retention limit and average catch rate of landings data from dealer reports, the amount of Atlantic aggregated LCS and hammerhead shark quota available is high, while harvest in the Atlantic region on a daily basis is low. Using current catch rates, projections indicate that landings would not reach 80 percent of the quota before the end of the 2019 fishing season (December 31, 2019). A higher retention limit authorized under this action will promote increased fishing opportunities and utilization of available quota in the Atlantic region.

- Estimated date of fishery closure based on when the landings are projected to reach 80 percent of the available overall, regional, and/or sub-regional quota, if the fishery's landings are not projected to reach 100 percent of the applicable quota before the end of the season.

Once the landings reach 80 percent of either the aggregated LCS or hammerhead shark quotas, NMFS would, as required by the regulations at § 635.28(b)(3), close the aggregated LCS and hammerhead shark management groups since they are “linked quotas.” However, current catch rates would likely result in the fisheries remaining open for the remainder of the year. The higher retention limit should increase the likelihood of full utilization of the quota in the Atlantic region, while also allowing the fisheries to operate for the remainder of the year.

- Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments.

Increasing the retention limit on the aggregated LCS and hammerhead management groups in the Atlantic region from 36 to 45 LCS other than sandbar sharks per vessel per trip would continue to allow for fishing opportunities throughout the rest of the year consistent with objectives established in the 2006 Consolidated HMS FMP, including rebuilding requirements

for overfished stocks.

- Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge.

The directed shark fisheries in the Atlantic region are composed of a mix of species, with a high abundance of aggregated LCS caught in conjunction with hammerhead sharks. Migratory patterns of many LCS in the Atlantic region indicate that sharks move farther north in the summer and then return south in the fall. Taking these migration patterns into account, NMFS increased the retention limit on June 25, 2019 from 3 to 36 LCS other than sandbar sharks per vessel per trip (84 FR 29808) to provide additional fishing opportunities for fishermen in the Mid-Atlantic and New England areas. However, based on dealer reports through August 9, 2019, harvest in the Atlantic region on a daily basis has been low. Therefore, NMFS is increasing the retention limit from 36 to 45 LCS other than sandbar sharks per vessel per trip in order to fully utilize the quota in the entire Atlantic region.

- Effects of catch rates in one part of a region or sub-region precluding vessels in another part of that region or sub-region from having a reasonable opportunity to harvest a portion of the relevant quota.

NMFS' goal for the 2019 commercial shark fishery is to ensure fishing opportunities throughout the fishing season and the Atlantic region (83 FR 60777; November 27, 2018, 84 FR 12524; April 2, 2019, and 84 FR 29808; June 25, 2019). While dealer reports indicate that, under current catch rates, the aggregated LCS and hammerhead shark management groups in the Atlantic region would remain open for the remainder of the year, the catch rates also indicate that the quotas would likely not be fully harvested under the current retention limit. If the harvest of

these species is increased through an increased retention limit, NMFS estimates that the fishery would remain open for the remainder of the year and fishermen throughout the Atlantic region would have a reasonable opportunity to harvest a portion of the quota.

On November 27, 2018 (83 FR 60777), NMFS announced in a final rule that the aggregated LCS and hammerhead shark fisheries management groups for the Atlantic region would open on January 1 with a quota of 168.9 mt dw (372,552 lb dw) and 27.1 mt dw (59,736 lb dw), respectively, and a commercial retention limit of 25 LCS other than sandbar sharks per trip for directed shark limited access permit holders in those fisheries. NMFS published a proposed rule on September 11, 2018 (83 FR 45866) and invited and considered public comment. In the final rule, NMFS explained that if it appeared that the quota is being harvested too quickly, thus precluding fishing opportunities throughout the entire region (*e.g.*, if approximately 20 percent of the quota is caught at the beginning of the year), NMFS would consider reducing the commercial retention limit to 3 or fewer LCS other than sandbar sharks and then later consider increasing the retention limit, perhaps to 36 LCS other than sandbar sharks per vessel per trip around July 15, 2019, consistent with the applicable regulatory requirements. In April 2019, dealer reports indicated that landings had reached 21 percent of the quota, and NMFS therefore reduced the commercial Atlantic aggregated LCS and hammerhead shark retention limit from 25 to 3 LCS other than sandbar sharks per vessel per trip on April 2, 2019 (84 FR 12524; April 2, 2019) after considering the inseason retention limit adjustment criteria listed in § 635.24(a)(8). On June 25, 2019, NMFS increased the retention limit from 3 LCS other than sandbar sharks to 36 LCS other than sandbar sharks (84 FR 29808). Based on dealer reports through August 9, 2019, approximately 83 percent and 67 percent of the

aggregated LCS and hammerhead shark quotas remain unharvested, respectively. Commercial shark landings in the Atlantic region at this point in the season are uncharacteristically low. A higher retention limit should increase the likelihood of full utilization of the quota in the Atlantic region, while also allowing the fisheries to operate for the remainder of the year.

Accordingly, as of *[insert date of filing for public inspection at the Office of the Federal Register]*, NMFS is increasing the retention limit for the commercial aggregated LCS and hammerhead shark management groups in the Atlantic region for directed shark limited access permit holders from 36 LCS other than sandbar sharks per vessel per trip to 45 LCS other than sandbar sharks per vessel per trip. This retention limit adjustment does not apply to directed shark limited access permit holders if the vessel is properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and “no sale” provisions apply (§ 635.22(a) and (c)); or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is onboard, in which case the restrictions noted on the shark research permit apply.

All other retention limits and shark fisheries in the Atlantic region remain unchanged. This retention limit will remain at 45 LCS other than sandbar sharks per vessel per trip for the rest of the 2019 fishing season, or until NMFS announces another adjustment to the retention limit or a fishery closure via a notice in the **Federal Register**, if warranted.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

Prior notice is impracticable because the regulatory criteria for inseason retention limit adjustments are intended to allow the agency to respond quickly to existing management considerations, including remaining available shark quotas, estimated dates for the fishery closures, the regional variations in the shark fisheries, and equitable fishing opportunities. Additionally, regulations implementing Amendment 6 of the 2006 Atlantic Consolidated HMS FMP (80 FR 50074, August 18, 2015) intended that the LCS retention limit could be adjusted quickly throughout the fishing season to provide management flexibility for the shark fisheries and provide equitable fishing opportunities to fishermen throughout a region. Based on available shark quotas and informed by shark landings in previous seasons, responsive adjustment to the LCS commercial retention limit from the incidental level is warranted as quickly as possible to allow fishermen to take advantage of available quotas while sharks are present in their region. For such adjustment to be practicable, it must occur in a timeframe that allows fishermen to take advantage of it.

Adjustment of the LCS fisheries retention limit in the Atlantic region will begin on *[insert date of filing for public inspection at the Office of the Federal Register]*. Prior notice would result in delays in increasing the retention limit and would adversely affect those shark fishermen that would otherwise have an opportunity to harvest more than the current retention limit of 36 LCS other than sandbar sharks per vessel per trip and could result in low catch rates and underutilized quotas. Analysis of available data shows that adjustment of the LCS commercial retention limit upward to 45 would result in minimal risks of exceeding the aggregated LCS and hammerhead shark quotas in the Atlantic region based on our consideration of previous years' data, in which the fisheries have opened in July. With quota available and

with no measurable impacts to the stocks expected, it would be contrary to the public interest to require vessels to wait to harvest the sharks otherwise available through this action. Therefore, NMFS finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Adjustment of the LCS commercial retention limit in the Atlantic region is effective *[insert date of filing for public inspection at the Office of the Federal Register]*, to minimize any unnecessary disruption in fishing patterns and to allow fishermen to benefit from the adjustment. Foregoing opportunities to harvest the respective quotas could have negative social and economic impacts for U.S. fishermen that depend upon catching the available quotas. Therefore, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.24(a)(2) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 14, 2019.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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